

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**MELINDA DEITER and
JOHN DEITER**

Plaintiffs,

v.

CITY OF WILKES-BARRE, et al.

Defendants.

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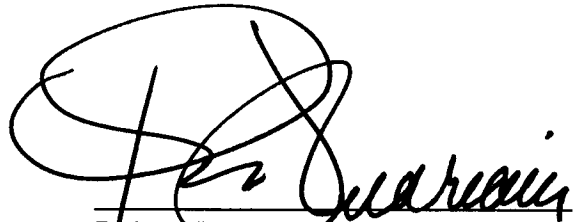
**3:16-CV-132
(JUDGE MARIANI)**

ORDER

AND NOW, THIS 31ST DAY OF OCTOBER, 2017, upon *de novo* review of Magistrate Judge Carlson's Report & Recommendation (Doc. 33), Plaintiffs' Objections thereto (Doc. 35), Defendants' Response (Doc. 36), Plaintiffs' Reply (Doc. 37), **IT IS HEREBY ORDERED THAT:**

1. The Report & Recommendation ("R&R"), (Doc. 33), is **ADOPTED** for the reasons discussed therein.
2. Plaintiffs' Objections, (Doc. 35), are **OVERRULED**. The magistrate judge correctly determined that "plaintiffs' real property due process taking claims should be dismissed without prejudice while the plaintiffs pursue their available state court remedies." R&R at 22.
3. Defendants' Motions for to Dismiss, (Docs. 10 and 30), is **GRANTED IN PART AND DENIED IN PART** as follows:
 - a. Plaintiffs' real property due process claims (under Count I) are **DISMISSED** without prejudice while Plaintiffs pursue their available state court remedies.

- b. Plaintiffs' state law claims (under Count III) are **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1367(c)(3).
- c. To the extent that Plaintiffs' Complaint raises Fourth Amendment claims which do not fall within the reach of state eminent domain laws (under Count II), such as Plaintiffs' claims with respect to their personal property, as opposed to real estate property, or the claims of John Deiter, who may not be covered in an eminent domain action due to the fact that he is not an owner of the real property, litigation of those claims only are **STAYED** pending either (1) the outcome of the state court litigation or (2) an election by plaintiffs to forgo that state court litigation and instead exclusively pursue any ripe federal claims.

A handwritten signature in black ink, appearing to read "R. D. Mariani", is written over a horizontal line.

Robert D. Mariani
United States District Judge